



9111-14

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination

Concerning Video Teleconferencing Server

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of video teleconferencing server Prescient T7-FW. Based upon the facts presented, CBP has concluded in the final determination that China is the country of origin of the video teleconferencing server for purposes of U.S. Government procurement.

DATES: The final determination was issued on September 11, 2013. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before [INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Valuation and Special Programs Branch: (202) 325-0041.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on September 11, 2013, pursuant to subpart B of Part 177, Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin

of video teleconferencing server Prescient T7-FW, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H218360, was issued at the request of CyberPoint International Inc., under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination CBP concluded that, based upon the facts presented, since the Chinese-origin Video Board and the Filter Board, impart the essential character to the video teleconferencing server, that China is the country of origin of the video teleconferencing server for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the *Federal Register* within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the *Federal Register*.

Dated: September 11, 2013.

Sandra L. Bell,
Executive Director,
Regulations and Rulings,
Office of International Trade.

Attachment

September 11, 2013

MAR-2 OTF:CTF:VS H218360 KSG

Vanessa P. Sciarra
Holland & Knight
2099 Pennsylvania Ave. NW
Suite 100
Washington, D.C. 20006

RE: Final determination; country of origin of video teleconferencing server; substantial transformation

Dear Ms. Sciarra:

This is in response to your letter, submitted May 2, 2012, supplemental submission dated October 22, 2012, and emails on July 22, and August 14, 2013, requesting a final determination on behalf of CyberPoint International Inc., pursuant to subpart B of part 177 of the U.S. Customs and Border Protection ("CBP") Regulations (19 CFR Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 ("TAA"), as amended (19 U.S.C. 2511 et seq.). CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of the video teleconferencing server Prescient T7-FW ("the Server"). As a U.S. manufacturer and wholesaler, CyberPoint International LLC. is a party-at-interest within the meaning of 19 CFR 177.22(d)(1), and is entitled to request this final determination.

FACTS:

This case involves the Server which is designed to communicate in a secure environment. The basic functionality of the product is to capture motion picture images and sound and send them digitally (via Ethernet) to a similar unit at a different location, where the digital data is reconstructed into motion picture and sound. In addition, the Server ensures that digital data (motion picture and sound) is sent securely between the two units, making the ability to infiltrate the unit via eavesdropping or malware through the network connection more difficult. You state that the security feature adds approximately 40 percent of the unit's value.

The Server is comprised of a video processing electronic circuit board ("Video Board") which includes the codec; a network filter electronic circuit board ("Filter

Board”); a housing case; a power supply circuit board; minor components, which include a heat sink, standoff hardware and screws, network cables and wire harnesses; and CyberPoint’s proprietary software known as the CyberPoint Linux Firewall (“Linux software”). The Linux software allows the Filter Board to inspect each Ethernet packet of information as it enters the LAN port of the Video Board, and to accept only those packets needed to perform the video teleconferencing functionality. You state that the Linux software is designed, developed and installed in the United States at great expense and with many man hours in its engineering, development and design by cyber-security professionals with years of experience in creating defensive solutions.

The Server can be used with video cameras, microphones and video display; however, these are optional attachments and are not part of the product under consideration.

The key hardware components are the Video Board, which converts image and sound into digital data, and the Filter Board, programmed with Linux software, which transmits the digital data via a LAN connector over the Ethernet and protects the connection from malware infiltration. The Video Board, including the codec, is manufactured in China, and has connections for various video input and output formats, two USB connections, and two Ethernet connections. One of the Ethernet connections interfaces with a microphone to capture sound, and the other interfaces with a LAN.

Two scenarios are presented. In the first scenario, the Video Board lacks the LAN connection when imported, meaning that it cannot transmit data. In the second scenario, the Video Board is fully functional as imported. Once imported into the U.S., the LAN connection is removed, the hole for this connection in the rear sheet metal of the unit is covered, a modification is made to the rear sheet metal to provide for a new connection point, and CyberPoint installs another cable that connects from the Filter Board to the new connection point. The LAN connector hardware is produced in the U.S. and developed by CyberPoint at its facilities in the U.S. CyberPoint states that the purposes of its installation of the LAN connection is to wipe the device clean from any malware residing in the original equipment.

The Filter Board is a circuit board that provides the necessary LAN connection of the Server and the secure connection that ensures no malware infiltrates the system during a videoconferencing session or during off hours. The Filter Board is made from a DreamPlug unit manufactured in China, a mini generic computer housed in a plug that contains a blank non-functional circuit board. In the U.S., the DreamPlug is disassembled; and the circuit board is removed, mounted on an aluminium heat sink, wired and programmed with Linux software, and configured, reinstalled and mounted on the Server’s metal case. The programming of the Filter Board with Linux software inputs the connectivity functionality, so that digital data can be transmitted securely from one unit to another.

The power supply and metal case for the server are produced in China. The heat sink is produced in the U.S.

The assembly of the various components in the U.S. involves the following:

- As stated above, holes are drilled in the metal case so the Filter Board and LAN connector hardware can be mounted;
- The DreamPlug is disassembled and the blank circuit board is removed, the Linux software is downloaded, and the card is then re-installed. This process takes approximately 4.5 hours;
- The Video Board is removed from the case and it is connected to the LAN connector with a network cable. Under the second scenario, the existing LAN connection has to be removed as well;
- A wire harness is installed to route the cables, and the Filter Board is installed to the heat sink. The LAN network connector is installed through the rear of the metal case. This takes approximately 2.5 hours;
- The finished Server is tested, labeled and packaged.

Counsel states that the overall assembly process in the U.S. takes approximately 20 hours to complete each unit.

ISSUE:

What is the country of origin of the Server?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*) (“TAA”), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. government. Under the rule of origin set forth under 19 U.S.C. 2518(4)(B), an article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. See *also* 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal Acquisition Regulations. See 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government’s purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. See 48 CFR 25.403(c)(1). The Federal Acquisitions Regulations define “U.S.-made end product” as:

...an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR 25.003

In *Data General v. United States*, 4 CIT 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedule of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign Programmable Read Only Memory Chip ("PROM") in the United States substantially transformed the PROM into a U.S. article.

In programming the imported PROM's, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The court noted that it was undisputed that programming altered the character of a PROM and that in that case, the essence of the article, its interconnections or stored memory, was established by programming.

In this case, we find that the essence of the imported good is its use as a video conferencing server. The Video Board and the Filter Board, which is a configuration of the DreamPlug unit, are the hardware components that impart the ability of the product to capture sound and image and to transmit that digital data so they impart the essential character to the finished good. While the addition of the U.S. developed software may add 40 percent to the unit's value, the software only adds a characteristic to the Server, but does not change its main function which is to send images and sound. Since the hardware components that impart the essential character to the finished product are of Chinese origin, we find that the country of origin of the Server for government procurement purposes is China.

HOLDING:

Based on the facts provided, the Server is considered a product of China for government procurement purposes.

Notice of this final determination will be given in the Federal Register, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-

interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell
Executive Director, Regulations and Rulings
Office of International Trade

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